

## Internal Revenue Service

Number: **201050020**

Release Date: 12/17/2010

Index Number: 368.05-00, 368.06-00,  
305.13-02

Department of the Treasury

Washington, DC 20224

[Third Party Communication:

Date of Communication: Month DD, YYYY]

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:CORP:04

PLR-124469-10

Date:

August 30, 2010

### Legend

Parent =

Sub 1 =

FSub 1 =

FSub 2 =

FSub 3 =

Newco =

LLC 1 =

LLC 2 =

LLC 3 =

State Y =

Country X =

Old Instrument =

New Instrument =

Agreement A =

Agreement B =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

a =

b =

c =

Dear :

This letter responds to your June 8, 2010 request for rulings regarding certain federal income tax consequences of a proposed transaction (the “Proposed

Transaction"). The information submitted in that request and in later correspondence is summarized below.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. This office has not verified any of the materials submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process.

### SUMMARY OF FACTS

Parent, a publicly-traded corporation, is the common parent of an affiliated group of corporations that files a consolidated federal income tax return. Parent owns through direct and indirect ownership all of the outstanding stock of Sub 1, a State Y corporation. Sub 1 owns all of the outstanding stock of LLC 1, a Country X entity, which is treated as a disregarded entity for federal income tax purposes. LLC 1 owns all of the outstanding common and preferred stock of FSub1, a Country X corporation. FSub 1 owns all of the outstanding stock of FSub 2, a Country X corporation, and LLC 2, a Country X entity, which is treated as a disregarded entity for federal income tax purposes. FSub 1 and FSub 2 own all the outstanding interests in FSub3, a Country X partnership that has elected to be taxed as an association for federal income tax purposes.

FSub1 has two classes of authorized stock: a shares of common stock ("Old FSub 1 Common Stock") and b shares of preferred stock ("Old FSub 1 Preferred Stock") (together, the "Old FSub 1 Stock"). FSub 1 has accrued but unpaid dividends with respect to the Old FSub 1 Preferred Stock. FSub 1 also has an instrument with LLC 1 ("Old Instrument").

Sub 1, FSub 1, FSub 2, FSub 3, LLC 1, and LLC 2 serve, in part, as the holding company structure of Parent's Country X and certain non-Country X businesses.

### PROPOSED TRANSACTION

Management of Parent desires to restructure the holding company structure of Parent's Country X and certain non-Country X businesses. Accordingly, to accomplish this pursuant to Country X law and serve what the taxpayer has represented as valid business reasons, the following transactional steps have been proposed:

#### *Recapitalization*

- (i) On Date 1, FSub 1 will recapitalize its Old FSub 1 Stock into a single class of common stock ("New FSub 1 Stock") (the "Recapitalization").

#### *Reorganization*

- (ii) On Date 2, Sub 1 will incorporate Newco in Country X.
- (iii) Beginning on Date 3, FSub 1 will borrow the Country X equivalent of \$c in exchange for a note ("Note 1").
- (iv) FSub 1 will transfer all of its assets and liabilities (including Note 1) to Newco, with the exception of \$c and Old Instrument, in exchange for Newco preferred shares.
- (v) Sub 1 will transfer its preferred shares in LLC 1 to Newco in exchange for common stock of Newco.
- (vi) LLC 1 will redeem its preferred shares held by Newco by issuing a note to Newco ("Note 2").
- (vii) Newco will redeem its preferred shares held by FSub 1 by issuing a note to FSub 1 ("Note 3").
- (viii) FSub 1 will transfer Note 3 to LLC 1. Note 3 held by LLC 1 and Note 2 held by Newco will offset.
- (ix) LLC 1 and FSub 1 will convert from Country X entities to State Y entities. Each of LLC 1 and FSub 1 will thereafter be treated as entities disregarded from Sub 1 for federal income tax purposes.
- (x) Sub 1 will form LLC 3 in State Y. LLC 3 will at all times be treated as an entity disregarded from Sub 1 for federal income tax purposes.
- (xi) FSub 1 will lend the Country X equivalent of \$c to Sub 1 in exchange for a note ("Note 4").
- (xii) Sub 1 will lend the Country X equivalent of \$c to Newco through the issuance of New Instrument.
- (xiii) LLC 3 and Newco will enter into Agreement A, and Sub 1 and LLC 3 will enter into Agreement B.
- (xiv) Newco will repay Note 1 on Date 4 using the Country X equivalent of \$c (collectively, steps (ii) through (xiv) referred to as the "Reorganization").

## REPRESENTATIONS

The following representations have been submitted regarding each named transaction:

*Proposed Transaction*

- (a) The transfers and exchanges constituting the Proposed Transaction will occur under a plan agreed upon before the Proposed Transaction in which the rights of the parties are defined.
- (b) All exchanges described in the Reorganization of the Proposed Transaction will occur between Date 3 and Date 4.
- (c) Old Instrument is treated as common equity for federal income tax purposes.
- (d) New Instrument will be treated as common equity for federal income tax purposes.

*Recapitalization*

- (e) The fair market value of the New FSub 1 Stock held by Sub 1 (through LLC 1) immediately following the Recapitalization will equal the fair market value of the Old FSub 1 Stock held by Sub 1 (through LLC 1) immediately before the Recapitalization.
- (f) The Recapitalization is a single, isolated transaction and it is not part of a plan to periodically increase the proportionate interest of any shareholder in the assets or earnings and profits of FSub 1.
- (g) The fair market value of the New FSub 1 Stock issued to Sub 1 (through LLC 1) as part of the Recapitalization with respect to the Old FSub 1 Preferred Stock will not exceed the issue price of the Old FSub 1 Preferred Stock surrendered, plus the accrued but unpaid dividends.
- (h) The deemed distribution pursuant to § 305 with respect to the Old FSub 1 Preferred Stock with dividends in arrears will be paid out of FSub 1's current and accumulated earnings and profits as of the date of the Recapitalization.
- (i) Sub 1 (through LLC 1) will include as gross income the portion of the deemed distribution pursuant to § 305 with respect to Old FSub 1 Preferred Stock as a dividend to the extent of current and accumulated earnings and profits.
- (j) FSub 1 is not under the jurisdiction of a court in a title 11 or similar case within the meaning of § 368(a)(3)(A) of the Code.
- (k) FSub 1 and Sub 1 (through LLC 1) will each pay their own expenses, if any, incurred in connection with the Recapitalization.

*Reorganization*

- (l) Immediately after the Reorganization, the proportionate interest of Newco held by Sub 1 will be the same as the proportionate interest that Sub1 held in FSub 1 (through LLC 1) immediately before the Reorganization.
- (m) The fair market value of the common stock of Newco and New Instrument that will be received by Sub 1 will be approximately equal to the fair market value of the New FSub 1 Stock and Old Instrument that will be surrendered by Sub 1 (through LLC 1) in the Reorganization.
- (n) Immediately after the Reorganization, for federal income tax purposes, Sub1 will have the same rights and interest in Newco that it held in FSub1 immediately before the Reorganization.
- (o) Immediately after the Reorganization, Sub 1 will, for federal income tax purposes, own only common stock of Newco and New Instrument, and will, for federal income tax purposes, own such stock solely by reason of its ownership (through LLC 1) of the New FSub 1 Stock and Old Instrument of FSub 1 immediately before the Reorganization.
- (p) For federal income tax purposes, the assets and liabilities of Newco immediately after the Reorganization will be the same as those of FSub 1 immediately before the Reorganization, except for: (i) assets used to pay expenses in connection with the Reorganization, which will be less than one percent (1%) of the fair market value of the net assets of FSub 1 immediately prior to the Reorganization and (ii) nominal cash contributed to Newco to meet minimal capital requirements under Country X law.
- (q) At the time of the Reorganization and immediately after the Recapitalization of FSub 1, each of FSub 1 and Newco will have outstanding a single class of stock. Neither FSub 1 nor Newco will have outstanding any convertible securities, warrants or options, or any other type of right or instrument, pursuant to which any person could acquire stock in FSub 1 or Newco.
- (r) For federal income tax purposes, the liabilities of FSub 1 to be assumed (within the meaning of § 357(d)) by Newco in the Reorganization plus the liabilities, if any, to which the transferred assets are subject, were incurred by FSub 1 in the ordinary course of its business and are associated with the assets to be transferred.
- (s) Immediately after the Reorganization, FSub 1 will cease to exist for federal income tax purposes.

- (t) Each of FSub 1, Newco and Sub 1 will pay its own expenses, if any, incurred in connection with the Reorganization.
- (u) FSub 1 is not under the jurisdiction of a court in a title 11 or similar case within the meaning of § 368(a)(3)(A) of the Code.
- (v) At all times prior to acquiring the assets of FSub 1 in the Reorganization: (i) Newco will have been engaged in no business activity; (ii) Newco will have had no federal income tax attributes (attributes described in § 381(c)); and (iii) Newco will have held no assets (except for holding a minimal amount of assets if such assets are required for the purpose of paying Newco's incidental expenses or required in order to maintain Newco's status as a corporation in accord with Country X law).
- (w) For federal income tax purposes, Sub 1 (through LLC 1) will receive solely Newco stock in the Reorganization.
- (x) Newco has no plan or intention to redeem or otherwise reacquire any stock issued in the Reorganization.
- (y) Newco will not have at the time of the Reorganization any plan or intention to issue additional stock following the Reorganization.
- (z) FSub 1 is not, and has never been, a passive foreign investment company, as defined in § 1297 of the Code (a "PFIC").
- (aa) FSub 1 is, and, immediately before the Reorganization, will be, a controlled foreign corporation, as defined in § 957 of the Code (a "CFC"), and Newco will be a CFC immediately after the Reorganization.
- (bb) Each person that is a § 1248 shareholder (within the meaning of Treas. Reg. § 1.367(b)-2(b)) of FSub 1 immediately before the Proposed Transaction will be a § 1248 shareholder of Newco immediately after the Reorganization.
- (cc) The notice requirements of Treas. Reg. § 1.367(b)-1(c)(1) will be met with respect to the Reorganization.
- (dd) Sub 1 will comply with Treas. Reg. § 1.367(b)-4(d) with respect to subsequent exchanges of Newco stock, as applicable.

## RULINGS

Based solely on the information submitted and representations set forth above, we rule as follows regarding each named transaction:

*Recapitalization*

- (1) The exchange by Sub 1 (through its ownership of LLC 1) of its Old FSub 1 Stock for the New FSub 1 Stock will qualify as a recapitalization and, therefore, a reorganization within the meaning of § 368(a)(1)(E). FSub 1 will be "a party to a reorganization" within the meaning of § 368(b).
- (2) No gain or loss will be recognized by FSub 1 on the receipt of its Old FSub 1 Stock for the New FSub 1 Stock (§ 1032(a)).
- (3) No gain or loss will be recognized by Sub 1 (through LLC 1), except pursuant to the deemed distribution under § 305 for dividends in arrears, upon the exchange of the Old FSub 1 Preferred Stock for the New FSub 1 Stock as described above (§ 354(a)(1)).
- (4) Sub 1 (through LLC 1) will include in gross income the amount of deemed distribution under § 305(c) equal to the lesser of (i) the amount by which the fair market value or liquidation preference, whichever is greater, of the New FSub 1 Stock received in the Recapitalization exceeds the issue price of Old FSub 1 Preferred stock, or (ii) the amount of dividends in arrears. (Treas. Reg. § 1.305-7(c)(2), Treas. Reg. § 1.368-2(e)(5)).
- (5) The basis of the New FSub 1 Stock received by Sub 1 (through LLC 1) in the Recapitalization, after making adjustments pursuant to the deemed distribution under § 305 for dividends in arrears, will be the same as the basis of the Old FSub 1 Stock surrendered in the exchange (§ 358(a)).
- (6) The holding period of the New FSub 1 Stock received by Sub 1 (through LLC 1) will include the period during which the Old FSub 1 Stock surrendered in exchange therefore was held, provided the Old FSub 1 Stock surrendered was held as a capital asset on the date of the exchange (§ 1223(1)).
- (7) The New FSub 1 Stock received by Sub 1 (through LLC 1) will not be "§ 306 stock" within the meaning of § 306(c).
- (8) Except as required for purposes of the deemed distribution under § 305 for dividends in arrears, the Recapitalization will not be treated as a distribution of property to which § 301 applies by reason of the application of § 305(b) and (c).
- (9) Regardless of any book entries made and except as necessary for purposes of the deemed distribution under § 305 for dividends in arrears, the exchanges of stock as described in the Recapitalization, will not diminish the accumulated earnings and profits of FSub 1 available for the subsequent



distribution of dividends within the meaning of § 316 (Treas. Reg. § 1.312-11(b) and (c)).

*Reorganization*

- (10) For federal income tax purposes, steps (ii) through (xiv) will be treated as a direct transfer by FSub 1 of its assets to Newco in exchange for all of the Newco stock and the assumption by Newco of the liabilities of FSub 1, followed by the liquidation of FSub 1 and the distribution of all the Newco stock to Sub 1 (through LLC 1).
- (11) The Reorganization will qualify as a reorganization described in § 368(a)(1)(F). FSub 1 and Newco will each be "a party to a reorganization" within the meaning of § 368(b).
- (12) No gain or loss will be recognized by FSub 1 upon the transfer of its assets and liabilities to Newco in exchange for the Newco Common Stock and New Instrument (§§ 361(a) and 357(a)).
- (13) No gain or loss will be recognized by FSub 1 upon the distribution of the Newco Common Stock and New Instrument to its shareholders in the Reorganization (§ 361(c)).
- (14) No gain or loss will be recognized by Newco upon the receipt of the assets of FSub 1 in the Reorganization in exchange for Newco Common Stock and New Instrument (§ 1032(a)).
- (15) The basis of the assets of FSub 1 held by Newco will be the same as the basis of that asset in the hands of FSub 1 immediately prior to the Reorganization (§ 362(b)).
- (16) The holding period of each asset of FSub 1 held by Newco will include the holding period of that asset in the hands of FSub 1 (§ 1223(2)).
- (17) No gain or loss will be recognized by Sub 1 upon its exchange of the shares of the New FSub 1 Stock and Old Instrument for the common stock of Newco and New Instrument (§ 354(a)(1)).
- (18) The basis of the common stock of Newco and New Instrument received by Sub 1 will, in each instance, be the same as the basis of the New FSub 1 Stock and Old Instrument for which each will be exchanged (§ 358(a)).
- (19) Provided the New FSub1 Stock and Old Instrument were held as a capital asset at the time of the Reorganization, the holding period of the common stock of Newco and New Instrument received in the exchange therefor will

include the holding period of the New Sub1 Stock and Old Instrument. (§ 1223(1)).

- (20) As provided by § 381(a), Newco will succeed to, and take into account, the tax attributes of FSub 1 enumerated in § 381(c), including any FSub 1 earnings and profits or any deficit therein.

#### CAVEATS

No opinion is expressed about the tax treatment of the Proposed Transaction under other provisions of the Code or regulations or the tax treatment of any conditions existing at the time of, or effects resulting from, the Proposed Transaction that are not specifically covered by the above rulings. In addition, we express no opinion about the federal income tax characterization of the Old Instrument and New Instrument as equity (common or preferred) or indebtedness.

#### PROCEDURAL MATTERS

This ruling is directed only to the taxpayer requesting it. § 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

Pursuant to a power of attorney on file in this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Lewis K Brickates  
Branch Chief, Branch 4  
Office of the Associate Chief Counsel (Corporate)

cc: